

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 STEPHANIE GREEN,

9 Plaintiff,

10 v.

11 UNITED STEEL WORKERS
12 INTERNATIONAL, *et al.*

13 Defendants.

NO. CV-07-5066-RHW

**ORDER DENYING
DEFENDANTS' MOTIONS TO
DISMISS**

14 On February 14, 2008, Defendants Domina, Cruz, Orosco, Knowles and
15 Miller filed a Motion to Dismiss (Ct. Rec. 49) and noted the hearing for March 4,
16 2008. The parties requested and the Court granted various motions for extensions
17 of time to respond to the motion. In the meantime, on March 7, 2008, the Court
18 granted the other Defendants' Motions to Dismiss and gave leave to Plaintiff to file
19 an amended complaint. On April 4, 2008, Plaintiff filed an Amended Complaint.

20 Defendants' Motion to Dismiss asks that the Court dismiss the original
21 complaint. The Court effectively granted this motion when it granted the other
22 Defendants' Motions to Dismiss on March 7, 2008. Therefore, this motion is
23 denied as moot.

24 On April 22, 2008, Defendants Cherrie Miller and Jim Orosco filed a
25 Motion to Dismiss for Failure to Timely Serve Defendants Miller and Orosco (Ct.
26 Rec. 67). Defendants assert that the 120-day deadline for Plaintiff to serve
27 Defendants was March 10, 2008. Plaintiff concedes that she did not serve
28 Defendants with the original complaint by the 120-day deadline. She asserts that

1 Defendant Miller has been evading service, and that she has made good faith
2 efforts in an attempt to serve Defendant Jim Orosco. Plaintiff asks for an extension
3 for service of process.

4 Given that the original complaint was dismissed prior to the expiration of the
5 120-days, the Court will permit Plaintiff additional time to file the Amended
6 Complaint. The Court notes that Defendants Orosco and Miller are represented by
7 counsel and have actively participated in this case. Pursuant to Fed. R. Civ. P.
8 4(m), the Court exercises its discretion to permit Plaintiff additional time to serve
9 the amended complaint. Plaintiff must serve the amended complaint pursuant to
10 Fed. R. Civ. P. 4. *See Employee Painters' Trust v. Ethan Enterprises, Inc.*, 480
11 F.3d 993, 995-96 (9th Cir. 2007) (holding that an amended complaint can be served
12 in the same manner as any other pleading if the original complaint is *properly*
13 *served* and the defendants appeared in the first instance) (emphasis added).

14 Accordingly, **IT IS HEREBY ORDERED:**

15 1. Defendants Domina, Cruz, Orosco, Knowles and Miller's Motion to
16 Dismiss (Ct. Rec. 49) is **DENIED, as moot.**

17 2. Defendants' Motion to Dismiss for Failure to Timely Serve Defendants
18 Miller and Orosco (Ct. Rec. 67) is **DENIED.**

19 3. Within 30 days from the date of this order, Plaintiff shall serve
20 Defendants Orosco and Miller, pursuant to Fed. R. Civ. P. 4.

21 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
22 Order and forward copies to counsel.

23 **DATED** this 20th day of May, 2008.

24 *s/ Robert H. Whaley*

25 ROBERT H. WHALEY
26 Chief United States District Judge

27 Q:\CIVIL\2007\Green\moot.wpd
28